

STATE OF MICHIGAN
COURT OF APPEALS

DALE DONALD KRUEGER, III, Personal
Representative of the Estate of MORGAN RYLEE
KRUEGER, Deceased,

UNPUBLISHED
August 25, 2005

Plaintiff-Appellant,

and

CARRIE KRUEGER,

Plaintiff,

v

SPECTRUM HEALTH,

No. 262035
Kent Circuit Court
LC No. 04-004867-NH

Defendant-Appellee.

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff Dale Donald Krueger, III, personal representative of the estate of Morgan Rylee Krueger, deceased, appeals as of right the trial court's order granting defendant's motion for summary disposition of his claim of ordinary negligence.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At 11:15 p.m. on October 3, 2001, plaintiffs Dale Krueger and Carrie Krueger presented their seven-week-old daughter, decedent Morgan Krueger, to defendant's emergency room with symptoms that included high-pitched crying, arching of the neck, and projectile vomiting. Decedent was seen in the triage area at approximately 1:30 a.m. on October 4, 2001, and eventually was diagnosed as suffering from bacterial meningitis. Decedent suffered a myocardial infection and a stroke that left her blind, deaf, and severely brain damaged.

¹ We note that during the pendency of this case in the trial court, the parties stipulated to the dismissal of individual claims brought by plaintiffs Dale Krueger and Carrie Krueger.

Plaintiffs filed suit alleging that defendant's delay in triaging decedent constituted medical malpractice or, in the alternative, ordinary negligence. The claim alleging medical malpractice was dismissed without prejudice pursuant to stipulation.² Defendant moved for summary disposition of the claim of ordinary negligence pursuant to MCR 2.116(C)(7) and (8), arguing that if it had no professional relationship with plaintiffs prior to decedent being seen by a triage nurse, it had no duty to render care to decedent, and that the claim sounded in medical malpractice rather than ordinary negligence. The trial court granted the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A medical malpractice claim arises from the course of a professional relationship and involves questions of medical judgment beyond the scope of common knowledge and experience. A claim of ordinary negligence raises issues within the common knowledge and experience of a factfinder. In determining whether a claim sounds in medical malpractice or ordinary negligence, a court must consider: (1) whether the claim pertains to an action that occurred in the context of a professional relationship; and (2) whether the claim raises questions of medical judgment that are beyond the realm of common knowledge and experience. If both questions are answered in the affirmative, the claim sounds in medical malpractice. *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 422; 684 NW2d 864 (2004). A professional relationship exists in a case in which health care professionals, a health care facility, or the agents or employees of a facility were subject to a contractual duty to render professional health care services. *Id.* If the reasonableness of an action can be evaluated by a jury only after the presentation of expert testimony, the claim sounds in medical malpractice. *Id.* at 423.

Here, plaintiffs took decedent to defendant's emergency room, registered at the entrance pursuant to the procedure established by defendant, and waited for treatment. We conclude that by doing so, plaintiffs entered into a professional relationship with defendant. See *Tipton v William Beaumont Hosp*, 266 Mich App 27, 34; 697 NW2d 552 (2005) (employing physician constitutes entering into professional relationship with physician). Plaintiff's claim relates to defendant's alleged failure to assess and begin treatment of decedent in a timely manner.³

² Decedent died on December 7, 2004. Dale Krueger was appointed personal representative of decedent's estate on February 24, 2005. A personal representative has two years from the date of appointment in which to file a wrongful death action. MCL 600.5852. Dale Krueger, as personal representative of decedent's estate, may seek to pursue an action alleging medical malpractice.

³ Plaintiff mischaracterizes deposition testimony regarding two other persons waiting for treatment at defendant's facility who spoke with defendant's staff regarding decedent. Plaintiff points to no evidence that demonstrates that the other persons advised defendant's staff that decedent's symptoms were such that she should be advanced to the front of the treatment queue.

Decisions on the order in which to treat patients who present to an emergency room with various medical problems of differing severity involve the exercise of medical judgment. *Bryant, supra* at 423. Thus, plaintiff's claim sounded in medical malpractice rather than ordinary negligence. *Id.*

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray